THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17332 OF 2006

ORDER:

This writ petition is field seeking a declaration that the alleged action of the respondents 2 and 3 in attempting to demolish 1st respondent-Choultry so as to replace the same by constructing a commercial complex as arbitrary and illegal and contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) (for short, 'the Act').

The facts, in brief, are as under:

One Mitta Venkata Subbaiah of Proddatur executed a will dated 5.12.1935 setting apart certain immovable properties situated in Sy.No.522/B & Sy.No.537/A of Proddutur, to an extent of Ac.0.45 cents and Ac.0.83 cents, respectively for the purpose of a Choultry. It was specifically mentioned in the will itself that one Brahmin family shall stay in the Choultry. It was also made clear in the will that the income derived from the above said property shall be spent for the maintenance of the Choultry.

Initially, the Choultry was in the management of the founder trustee and, subsequently, an Executive Officer was appointed by the Endowments Department. The main source of income for maintenance of the Choultry is the rents received from six shops situated on the above property.

The petitioner who is the daughter of late Venkata Subbaiah claims to be one of the trustees. It is stated that she was administering the management of the Choultry till an Executive Officer was appointed under Section 29 of the Act to look after the day to day administration of the 1st respondent Choultry.

It is not in dispute that though initially one Munikrishnaiah, grandson of late Venkata Subbaiah, was declared as the founder

family member of the 1st respondent Choultry, the Revision Petition – R.P.No.10/2003 - preferred by the petitioner herein under Section 92 of the Act was disposed by the Regional Joint Commissioner, Endowments Department, Tirupathi by order dated 22-3-2004 allowing the petitioner and the said B. Munikrishnaiah to continue as founder trustees once in two years alternatively on rotation basis.

While so, it was proposed to construct a commercial complex with 100 shops in the place of existing structures and for the said purpose, the Executive Officer published an auction notice dated 11.8.2006 proposing to conduct public auction for granting leasehold rights in respect of 48 shops in the ground floor and 52 shops in the first floor. The said notice is challenged in this writ petition contending *inter alia* that the proposed construction of shopping complex by demolishing the existing Choultry is against the wish of the donor, and particularly since the permission of the trust-board was not obtained the proposed construction is impermissible. It is also contended that the action of the 3rd respondent in constituting a Development Committee for executing the proposed construction of shopping complex is without any authority. While pointing out that the terms and conditions prescribed under the auction notice are beyond the scope of the Statutory Rules made under G.O.Ms.No.866 dated 8.8.2003, it is contended that the construction of the proposed shopping complex would entirely change the physical features of the Choultry, apart from being contrary to the purpose for which the properties were set apart by the donor.

A counter-affidavit has been filed by the Commissioner of Endowments stating that the General Power of Attorney Holder of the petitioner – founder family member passed a resolution dated 1.7.2005 to demolish the old structure and for construction of a new shopping complex with an estimated cost of Rs.1.73 crores. He also made a representation to the Deputy Commissioner of Endowments requesting to accord permission for construction of a shopping

complex. Basing on the above resolution, the Executive Officer of the Choultry submitted a report to the Deputy Commissioner of Endowments. Having considered the same, the Commissioner of Endowments submitted a report to the Government and after due examination of the matter in the light of the provisions under Act 30 of 1987 and the Rules made thereunder and particularly with reference to the will dated 5.12.1935, the Government issued orders vide G.O.Rt.No.2604, Revenue (Endowments.II/1) Department, dated 28.12.2005 duly appointing a Renovation Committee for construction of shopping complex duly safeguarding the interest of the institution and the wishes of the founder of the Choultry. In pursuance thereof, the Renovation Committee and the Executive Officer had submitted proposal for construction of the shopping complex. The Government having considered the said proposal passed orders dated 1.7.2006 granting permission to the Executive Officer and the Chairman of the Renovation Committee to collect donations from the merchants who are willing to bear the expenditure towards construction of shop rooms and also permitted to lease out the shop rooms to the said merchants for a period of 12 years on a monthly rent of Rs.1,000/- with enhancement at the rate of 12 ½% every three years. The Government has also directed that the selection process of donors shall be transparent and be known to everybody and therefore the same shall be conducted by way of public auction. Accordingly, the Executive Officer and the Renovation Committee issued auction notice dated 11.8.2006 proposing to conduct auction on 28.1.2006. Condition No.1 made it clear that the intended bidders have to deposit a sum of Rs.1.00 lakh in the name of the Executive Officer and the Chairman of the Renovation Committee. It is also stated that the entire process of construction of shopping complex was initiated basing on the request made by the son of the petitioner, who is holding Power of Attorney. It is also pointed out that as per the will dated 5.12.1935 as well as the orders passed by the Regional Joint Commissioner dated 22.3.2004

administration of the Choultry has to be managed on rotation basis by two members of the donor family. Thus, the petitioner cannot claim any exclusive right to administer the Choultry.

I have heard the learned counsel for both the parties and perused the material on record.

It is true that under Section 29(5)(a) of Act 30 of 1987, the Executive Officer appointed shall be under the administrative control of the trustee of the Institution and shall be responsible for carrying out lawful directions issued by such trustee from time to time. However, the specific case of the respondents is that the proposed construction of the shopping complex has been taken up only at the instance of the founder trustee. It is also relevant to note that as per the will executed by late Venkata Subbaiah, the structure of the Choultry can be developed out of the funds derived from the rents and that in case it is beneficial to the institution, construction can be taken up by borrowing funds which can be cleared from the rents realized. The only restriction imposed was not to alienate or mortgage the properties of the subject institution. On a careful consideration of the entire material on record, I am unable to hold that the proposed construction of the shopping complex is in any way contrary to the wishes of the donor much less against the interest of the institution. As a matter of fact, the proposed construction of shopping complex adds to the value of the properties and undoubtedly it would be an improvement of the properties. Since the conditions of the impugned auction notice make it clear that only the leasehold rights are put to auction, the impugned action does not amount to alienating or mortgaging the properties and consequently cannot be held to be contrary to the wishes of the donor. So far as the consent of the trustees of the institution is concerned, as could be seen from the material placed before this Court, the construction of shopping complex itself was proposed on a request made by the son of the petitioner who is holding General Power of Attorney to represent her. Strangely, this writ petition has

been filed without making the said GPA holder, at whose instance the construction was taken up as a party to the writ petition.

Though it is stated that the other founder family member Munikrishnaiah died on 13-4-2006, I find force in the submission of the learned Counsel for the respondents that the petitioner cannot claim that she is the sole founder family member since the legal heirs of late Munikrishnaiah are entitled to be declared as the founder family members along with the petitioner as per law. Hence, the respondents are justified in contending that the petitioner cannot maintain this writ petition on her own.

The further contention raised by the petitioner that G.O.Rt.No.2604, dated 28-12-2005 constituting the Renovation Committee is without any authority is also untenable since Section 146 of the Act empowers the Government to constitute a Renovation Committee to any religious or charitable institution.

For the aforesaid reasons, the impugned action of the respondents either in appointing the Renovation Committee or in issuing the impugned auction notice cannot be held to be in contravention of the statutory provisions or contrary to the wishes of the founder of the 1st respondent choultry. There is also absolutely no justifiable reason to hold that the impugned action is not in the interest of the 1st respondent institution.

Hence, the writ petition which is devoid of any merit is hereby dismissed. No costs.

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G. ROHINI, J.

Dt. 5-9-2007
kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17332 OF 2006

5th September, 2007.

Between:

B. Subbalakshamma. .. Petitioner.

And

Sri Mitta Papaiah Choultry, Proddutur,
Kadapa District, represented by its
Executive Officer and others. .. Respondents